IP 04-1125-C K/Y Midwestern v Masterbrand
Magistrate Tim A. Baker Signed on 12/30/04

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MIDWESTERN COUNCIL OF INDUSTRIAL WORKERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, CARPENTERS LOCAL UNION NO. 2930,	)	
Plaintiffs,	)	
vs.	)	NO. 1:04-cv-01125-TAB-RLY
MASTERBRAND CABINETS, INC.,	)	
Defendant.	)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MIDWESTERN COUNCIL OF INDUSTRIAL WORKERS, et al.,	)	
Plaintiffs,	)	
vs.	)	1:04-cv-1125-TAB-RLY
MASTERBRAND CABINETS, INC.,	)	
Defendant.	)	

ORDER ON PENDING MOTIONS

John Autry, Sr. was not pleased with the new collective bargaining agreement between his employer, Masterbrand Cabinets, Inc. ("Masterbrand"), and his union (the "Union").[1] Autry demonstrated his displeasure by using Masterbrand's intercom system during work hours to proclaim to his fellow employees, "Bend over, here it comes again for three years." [Docket No. 20, Ex. 5, p. 3]. When the plant manager later asked Autry whether he had made the statement over the intercom during lunch, Autry sarcastically responded that he had done so *after* lunch. Masterbrand failed to see the humor in Autry's statements, and terminated his employment effective December 5, 2002. An arbitrator found that the termination was not for just cause, and ordered Masterbrand to return Autry to work. Masterbrand refused. Accordingly, the Union brought this action to enforce the arbitrator's award. Masterbrand counterclaimed, asking this Court to vacate the award. The parties have filed cross motions in support of their respective

[1]The Union in this action is the Midwestern Council of Industrial Workers, United Brotherhood of Carpenters and Joiners of America, and its affiliate, Carpenters Local Union No. 2930.

positions.[2]

If the issue before this Court were whether Masterbrand could terminate Autry for his impish behavior, the Court might very well side with Masterbrand. But that is not the issue. As the Seventh Circuit Court of Appeals explained in Butler Mfg. v. United Steelworkers, 336 F.3d 629, 632 (7th Cir. 2003):

> A court's role in reviewing an arbitral award is quite limited. Apart from the general reasons for setting aside any arbitral award found in the Federal Arbitration Act, 9 U.S.C. § 10, the court may consider only whether an arbitrator exceeded the scope of the authority conferred upon her by the parties' actions and agreements. Northern Indiana Pub. Serv. Co. v. United Steelworkers of Am., 243 F.3d 345, 346-47 (7th Cir. 2001). With few exceptions, as long as the arbitrator does not exceed this delegated authority, her award will be enforced. This is true even if the arbitrator's award contains a serious error of law or fact. Major League Baseball Players Assoc. v. Garvey, 532 U.S. 504, 509, 121 S.Ct. 1724, 149 L.Ed.2d 740 (2001) (per curiam); Nat'l Wrecking Co. v. Int'l Bhd. of Teamsters, Local 731, 990 F.2d 957, 960 (7th Cir.1993). Otherwise, as we have pointed out in the past, arbitration would just be the first of a series of steps that always culminated in court litigation, and it would lose its *raison d'être.* See Flexible Mfg. Sys. Pty. Ltd. v. Super Prods. Corp., 86 F.3d 96, 100 (7th Cir. 1996).

This is not to say that the arbitrator gets a free pass. "The arbitrator, of course, cannot simply pay lip service to his obligation to follow the collective bargaining agreement." Arch of Illinois v. Dist. 12, United Mineworkers, 85 F.3d 1289, 1293 (7th Cir. 1996). But as the

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[2]The Union filed a motion for judgment on the pleadings [Docket No. 11], and Masterbrand filed a motion for summary judgment. [Docket No. 18]. At the November 3, 2004 initial pretrial conference, the Court (with the concurrence of counsel) stated that it would treat the motion for judgment on the pleadings as a motion for summary judgment. [Docket No. 16]. The Court established a schedule for briefing and submission of any additional materials. The motions are now fully briefed. Masterbrand's request for oral argument [Docket No. 21] is denied. As there are no material facts in dispute, summary judgment is appropriate. See, e.g., Dempsey v. Atchison, Topeka and Santa Fe Ry. Co., 16 F.3d 832, 836 (7th Cir. 1994) ("[S]ummary judgment is appropriate – in fact, is mandated – where there are no disputed issues of material fact and the movant must prevail as a matter of law."). Accord, Powers v. Runyon, 974 F. Supp. 693, 696 (S.D. Ind. 1997).

foregoing makes clear, judicial review of arbitration awards is extremely narrow. This is particularly so when the reviewing court is called upon to examine the arbitrator's conclusion about whether just cause existed for a discharge. As explained in Arch of Illinois:

> We will set aside an arbitration award if "there is no possible interpretive route to the award, so a noncontractual basis can be inferred." Chicago Typographical Union, 935 F.2d at 1506. Thus, although the arbitrator in his opinion may purport to interpret the collective bargaining agreement, if we determine that the award itself cannot logically follow from the agreement, we will refuse to enforce the award. The interpretive route in this case, however, is not difficult to discern. Under the Agreement, AOI could discharge Pierce only for "just cause." The Agreement explicitly leaves the determination of just cause to the arbitrator. Just cause is a flexible concept, embodying notions of equity and fairness, and is certainly open to interpretation by the arbitrator. See E.I. DuPont de Nemours & Co. v. Grasselli Employees Independent Assoc. of East Chicago, Inc., 790 F.2d 611, 614-15 (7th Cir.) (finding that arbitrator could consider notions of fault and procedures afforded to grievant in determining just cause), cert. denied, 479 U.S. 853, 107 S.Ct. 186, 93 L.Ed.2d 120 (1986). A finding that AOI lacked just cause to discharge Pierce because of its failure to consider his seniority is not so far-fetched as to lead us to deduce that the arbitrator relied on a noncontractual basis for the award.

Id. at 1293-94. See also International Union of Operating Engineers v. J. H. Findorff & Son, Inc., ___ F.3d ___, No. 04-1834 (7th Cir. Dec. 30, 2004) (discussing district court's limited role in reviewing arbitration decisions). Applying this standard to the case at bar results in a finding in the Union's favor.

As set forth in Masterbrand's brief, the basis for Autry's discharge was threefold: (1) acting in an insubordinate and/or derisive manner by misusing Masterbrand's intercom system (in violation of Work Rule 3(1)); (2) the timing of the statement in relation to the ratification of the collective bargaining agreement; and (3) the fact that the content of the statement could be construed as threatening and intimidating to employees in the workplace (in violation of Work Rule 3 (a) and (b)). [Docket No. 19, p. 6].

In finding a lack of just cause for Autry's discharge, it was the arbitrator's sense that there was a "rush to judgment intending to assuage the feelings of certain management personnel." [Docket No. 20, Ex. 5, p. 6]. Given that Autry's statements were made in the wake of a new collective bargaining agreement, the arbitrator's sense of things may well be on the mark. The arbitrator also rejected Masterbrand's contention that Autry's actions "somehow intentionally damaged [Masterbrand's] business and hurt its reputation in the business world and the greater community where it is located." [Id.]. The arbitrator similarly found no evidence that Autry's remarks "fomented either a wildcat strike or a 'slow down' reaction impeding the production at normal levels." [Id.]. The arbitrator found the economic losses asserted by Masterbrand to be "totally unsupported by the evidence in this case." [Id.]. In short, the arbitrator found that Masterbrand failed to meet its burden of proof to support the discharge. [Id.].

Masterbrand takes strong issue with the arbitrator's ruling at several levels. It claims the arbitrator – not Masterbrand – rushed to judgment after unreasonably delaying his decision and then hurrying to meet a decision deadline imposed after the Federal Mediation and Conciliation Service became involved. [Docket No. 19, pp. 2, 13]. Masterbrand suggests that this supposed hurried approach resulted in the arbitrator making a crucial factual error. Specifically, the arbitrator apparently believed that the company waited two days to confront Autry about the incident, when in fact Autry was confronted within minutes. [Docket No. 19, p. 14]. Masterbrand also accuses the arbitrator of making other "significant factual inaccuracies" and engaging in a "limited analysis." [Docket No. 19, pp. 14, 16].

Even if Masterbrand is correct that the arbitrator tarried, then hurried, his decision,

resulting in a limited analysis with some factual inaccuracies, this is insufficient to overturn the decision. As noted above, with few exceptions, as long as the arbitrator does not exceed delegated authority, the award will be enforced – even if the arbitrator's award contains a serious error of law or fact. Major League Baseball Players Assoc. v. Garvey, 532 U.S. 504, 509 (2001) (per curiam).

Masterbrand's core argument, however, lies elsewhere. Specifically, Masterbrand contends that the arbitrator's conclusion that Autry's conduct did not warrant discipline fails to draw its essence from the collective bargaining agreement. [Docket No. 19, p. 10]. In support of this argument, Masterbrand asserts that it established at arbitration that every employee who misused the intercom system as Autry did under the current plant manager's tenure has been disciplined. [Docket No. 19, p. 10]. While this argument is more persuasive than others that Masterbrand set forth, the Court is not convinced.

Contrary to Masterbrand's suggestion, it is not clear that the arbitrator agreed that Masterbrand established that every employee who misused the intercom system as Autry did under the current plant manager's tenure has been disciplined. Rather, the arbitrator noted the Union's position to the contrary, and the arbitrator never specifically addressed this point further. [Docket No. 20, Ex. 5 p. 5]. The Union's cross examination of the plant manager established that others who used the intercom system for non-business purposes were not disciplined, though the plant manager concluded that such instances did not involve comments that plant customers/visitors might consider "obscene" or inappropriate. [Docket No. 20, Ex. 2, p. 7; Docket No. 23, p. 6]. The arbitrator specifically noted this cross examination in setting forth the Union's position. [Docket No. 20, Ex. 5, p. 5].

Just as important, the arbitrator set forth numerous reasons for finding discipline unwarranted. For example, the arbitrator found that Autry's statement: (1) was a "very limited statement in terms of the time it occupied;" (2) "did not identify or attempt to vilify Management personnel or bargaining unit members;" (3) was "indicative of his intent to release his frustrations over the new contract's arrival more so than a call to engage in nefarious conduct;" and (4) "might have seemed crass" but could not properly be termed a threat. [Docket No. 20, Ex. 5, pp. 6-7].

In light of the foregoing, the arbitrator interpreted the collective bargaining agreement to find no just cause for Autry's termination. Where, as here, a collective bargaining agreement commits the parties to arbitration, the arbitrator's interpretation of the agreement is the one they have "bargained for" and must abide by. Eastern Assoc. Coal v. United Mineworkers of America, Dist. 17 , 531 U.S. 57, 62 (2000). Masterbrand's disappointment with the arbitrator's decision is readily understandable. But such disappointment is insufficient to overturn the arbitrator's decision, given the narrow window of judicial review.

The only remaining issue is the Union's request that this Court remand this action to the arbitrator for a determination regarding attorney's fees, interest, and other post-award relief.[3] [Docket No. 12, p. 5]. Masterbrand objects to this request on various grounds, including that Masterbrand's conduct was not willful, that the arbitrator's decision sets forth a process by which back pay and the other components of his award should be executed, and that the arbitrator did not retain jurisdiction over those or any other issues. [Docket No. 19, p. 18;

[3]The Union clarified in its opposition brief that it is not asking this Court to award such relief, but rather is merely seeking a remand to allow the arbitrator to take up the issue. [Docket No. 23, pp. 14-15].

Docket No. 20, Ex. 5, p. 8].

As the Union points out, however, Masterbrand has now arguably breached the collective bargaining agreement twice (once by terminating Autry, and once by failing to abide by the arbitrator's decision). Masterbrand could be on the hook for the Union's attorney's fees for failing to put Autry back to work as ordered. Widell v. Wolf, 43 F.3d 1150, 1151-52 (7th Cir. 1994). And the Union has set forth sufficient argument and evidence that determining Autry's damages is not a ministerial task. [Docket No. 23, p. 16]. Under the circumstances at hand, remand is appropriate. Glass, Molders, Pottery, Plastics and Allied Workers International Union v. Excelsior Foundry Company, 56 F.3d 844, 849 (7th Cir. 1995).

Accordingly, the Union's motion for summary judgment is granted. Masterbrand's motion for summary judgment is denied. The arbitrator's decision is affirmed. This cause is remanded to the arbitrator to consider issues relating to the appropriate relief requested by the Union. Judgment shall issue accordingly.

SO ORDERED this 30th day of December, 2004.

s/Tim A. Baker
Tim A. Baker
United States Magistrate Judge
Southern District of Indiana

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